BRIEF ASSESSMENT

ON

ROMANIA'S COMPLIANCE WITH THE EU ACCESSION POLITICAL CRITERIA

Drafted by:

Open Society Foundation - Romania

Institute for Public Policy

Center for Legal Resources

Partnership for Equality Center

CHAPTER I

THE POLITICAL PROCESS

1. ASSESSMENT OF THE 2003 REFERENDUM

The 2003 Referendum for Amending the Constitution was severely marred by illegal enticements to vote, unlawful use of the mobile ballot boxes, and deliberate failure to prosecute violations.

The November 2003 Referendum for Amending the Constitution clearly showed that elections management is far from being a strong institution in Romania, both in terms of legal regulations and of practice. Thus, in order to prove to the domestic and the international community that the Government meets with the population's approval, the organizers have deliberately violated a number of regulations.

Extending the voting period. At first, the Referendum was scheduled for Sunday, October 19th, but fear of low voter turnout led the Government to issue an Emergency Ordinance a few weeks before the date set for the referendum, changing the duration of the popular consultation to two days, October 18th and 19th.

Enticing voters. Despite the changes in the referendum schedule, opinion polls still showed limited interest in the Referendum, so steps were taken to encourage voter turnout. The media reported that alongside legitimate public appeals to get out to vote, local authorities and universities organized raffles for the voters, and other such unlawful activities, and the National Forestry Company, Romsilva, promised to distribute free supplies of wood for heating for those villages that had a high voter turnout. Authorities portrayed such enticements as being normal, in spite of a clear legal provision sanctioning such behavior.

Misusing mobile ballot boxes. As the number of voters continued to be low, violations of the law on referenda continued during the Referendum proper. The media reported several cases in which campaigning to vote the new constitution took place nearer the polling station than the 500 meters prescribed by the law, and, in some instances, within the very station. Several complaints about individuals who cast more than one ballot were also reported. The most obvious and dire of these violations was the misuse of mobile ballot boxes. The law stipulates that these may be transported only by members of the Electoral Bureau of the polling stations, and only to those individuals who are not able to move because of illness or invalidity, or who are hospitalized. On the afternoon of October 19th, however, "volunteers" patrolled the streets and markets with multiple mobile ballot boxes, as the media has clearly shown. In fact, Euronews broadcast every half hour several images of voting in mobile ballot boxes, filmed on the streets, in churches, or on offshore platforms. Eyewitnesses confirmed the presence of such ballot boxes even in hypermarkets or open markets. Ad-hoc polling stations were improvised at border checkpoints as well, in clear breach of the law.

Deliberate failure to prosecute. Several NGOs requested that the General Prosecutor's Office start an investigation on all reported cases. Despite the clear evidence, the response was that no violation of the law had occurred, which undermines the very basis of respecting the law.

2. THE NEW CONSTITUTIONAL PROVISIONS AND EMERGENCY LEGISLATION

New constitutional provisions regarding emergency legislation changed nothing, and the government continues to rule through Emergency Ordinances.

Article 115 of the new Constitution, regarding legislative delegation, states: "*(4) The Government may adopt emergency ordinances only in extraordinary situations whose regulation cannot be postponed with the obligation to justify the emergency*". The two changes are on the "extraordinary situations" compared to "exceptional cases" and on the need to motivate the emergency. In reality this new provision has not brought any change and the possibility to issue them has been abused like in the past: By 16 June 2004, the number of emergency ordinances adopted and published in the Official Gazette was 47, compared to 46 adopted and published by 16 June 2003.

3. THE IMPLEMENTATION OF THE LAW ON POLITICAL PARTIES

Tough registration criteria and lax control of actual compliance characterize the implementation of the new law on political parties.

The law on political parties unreasonably restricts freedom of association, providing for tough requirements for the registration of political parties: 25.000 founding members, from no less than 18 counties (out of 41) plus Bucharest and at least 700 in each of these counties. Nevertheless, during the last year its implementation has been less difficult than originally expected for the mere reason that it was not observed. In other words, the re-registration was an easy undertaking because the control of the declared members was in fact nonexistent. However, we must emphasize that the law makes the registration of regional parties or minorities' parties practically impossible. (*The issue of the electoral representation of minorities is further discussed on chapter regarding national minorities)*

4. THE IMPLEMENTATION OF THE LAW ON LOCAL ELECTIONS

Insufficiently discussed and hastily adopted electoral legislation limited minority participation, restrained freedom of expression, and gave rise to contradictory interpretations. Abuse of public office and public monies was rampant.

Restricted minority participation. As the bill on local elections was hastily adopted only a few critical opinions could be formulated by the civil society. One legal provision seriously challenged by several NGOs regarded the legal conditions that a minority group (other than the ones already present in the Parliament) should fulfill in order to be run for local office. Unfortunately, the late minute advocacy of several NGOs had no positive impact both political parties and minorities groups in the Parliament, which claimed that unless a law on minorities was adopted, no limited and specific modifications in the political representation of such minority groups should be accepted in an electoral year (!).

Limits on political commentary. Another very restrictive provision, regarding freedom of expression, states that that no political commentary shall be accepted within 48 hours before the voting day, a provision which applies to the media as well. It was only after the campaign for local elections had already started that the media associations noticed this provision, which has already been invoked to curtail media freedom. (*See discussion on pages 15 and 16)*

Contradictory interpretations. One such example referred to "the participation" of the Prefects (the Government appointee in every county) in the electoral campaign. The Central Electoral Bureau had contradictory interpretations about it. First it decided that no Prefect should be present at any electoral event of any candidate, applauding or approving the candidate's speech, while days later it refused to issue a decision on a concrete situation stating that the mere presence of the Prefect at an electoral show is not to be considered electoral implication.

Abuse of authority and public resources. The misuse of public authority and public resources has dominated this local electoral campaign. For instance, the candidates of the ruling party have visited schools and campaigned among youth, although such actions are clearly forbidden by both the law on elections and the law on education. The logistics and personnel resources of public institutions of office holders (for example, the deputies' and senators' cars, phones and local staff paid from the public budget) were also used in campaigning. The Senate went as far as issuing a decision permitting this abuse of resources, by allowing MPs to avail themselves of the cars provided for their transportation while in office, and use them in their travel in the country for campaigning. The authorities in charge have failed to address the issue.

Questionable independence of election authorities. A major problem in the elections is the absence of an effective Permanent Electoral Authority. In theory, the institution has been set up, but it is not functional yet, and its independence is also questionable. Although the president and the two vice-presidents of the institution were appointed, the regular staff is not yet assembled and ready to perform any of their duties. Regarding the so called independence it has to be emphasized that the president and one of the vice presidents were PSD members until the moment of their appointment: one an MP, the other one a high government official in the Ministry of Internal Affairs. Their alleged lack of independence was long disputed and started a long list of complaints from the opposition parties' representatives in the Central Electoral Bureau.

Disregard for violations. An essential feature of the elections was the disregard for basic rules and regulations of electoral behavior and campaigning. The law on local elections forbids the offering of gifts and other such stimulants to voters during the electoral campaign, and provides for penal sanctions for this type of electoral fraud. However, the media and some NGO documented cases which occurred during the electoral campaign were not investigated or sanctioned by any public authority.

Useless and burdensome requirements. It must be emphasized that the legal framework was again amended while the electoral campaign had practically started. Arguing that it would increase transparency, the Government issued an Emergency Ordinance right before the official launch of the campaign, requiring all candidates to fill in a declaration of assets that the County Council would post on the internet. This last minute decision seriously undermined the principle of equal competition, and also required a huge amount of work from civil servants within the County Councils. From the point of view of the anti-corruption measures this decision has been useless since what is important to know is not the wealth of all the candidates, but only of those elected, both at the beginning of their mandate and in the course of their activity.

5. THE IMPLEMENTATION OF THE LAW ON FREE ACCESS TO PUBLIC INTEREST INFORMATION AND OF THE LAW ON TRANSPARENCY OF DECISION MAKING IN PUBLIC ADMINISTRATION

While the legal framework is relatively adequate for its purposes, implementation is still faulty, fraught by ignorance and lack of professionalism, but also by the lack of political commitment, and sometimes by deliberate efforts to prevent access to public information and debate.

A high degree of arbitrariness. Important steps have been made towards establishing a legal framework to ensure transparency and accountability of the public institutions (through adopting the Law 544/2001 on free access to information, and the Law 52/2003 on transparency of decision making in public administration) but the implementation differs from one public institution to another (local or central) depending on the management of the public information as well as the political commitment. It is often that civil servants or mayors themselves are not familiar with the provisions of the law, and consequently the logistics and human resources necessary for the enforcement of the laws have not yet been allocated. At the same time, political arbitrariness still obstructs free access to information. Many institutions of the local public administration have not yet established the list of classified information or information exempted from free access, which sometimes leads to arbitrary decisions of withholding public information of the grounds of their exemption. High prices for photocopying represent another way of hindering access to information.

Insufficient commitment. Another reason for concern is that the Law on transparency of decision making (Law 52/2003) is very little known among interests groups that might want to react in the context of adopting a decision. The Government itself has acknowledged that business groups, for example, are not aware that such legal possibility for them to interfere with the decision making process exists and allows them to express their concerns before a decision is adopted. The Government has proven insufficient commitment to genuinely inform the public about how to participate in the normative process. In some places this lack has been completed by the work of NGOs but due to scarcity of financial resources it has been only partially possible. Media and the NGOs have benefited most from the provisions of the two laws related to transparency.

Lack of sanctions. One serious drawback in the enforcement of the laws relates to lack of sanctions against public officials or civil servants who have breached the law, and as a consequence there is very little jurisprudence in these legal matters. Moreover, public institutions often do not obey the Court decisions therefore the petitions brought to the Court by a few NGOs, although successful in many cases, have not been followed by the reveal of required information.

Barriers to contributions. Access to draft bills very much rely on personal contacts with MPs as well as on partnerships with media which have better chances to collect information on the content of a bill or, even more important, about the timeline of the adoption. Under these circumstances, consultation with the civil society is rather simulated than effective and oriented towards learning critical feedbacks. The Government looks at NGOs as efficient channels to gain more credibility and legitimizing its own political choices, rather than considering them genuine partners.

The more sensitive the issues are the more opaque and non-transparent the public institutions are. This has been the case of senators' and deputies' protocol expenditures, the conflict of interest or gathering assets during the public mandate. For the first time after 1989 both Chambers of Parliament adopted decisions classifying information relating to expenditures of public funds on items that relate to travel and accommodation, phone bills, logistics, equipment

purchase, etc. Moreover, the decisions classifying this information have been classified themselves, thus making it impossible to get a clear picture on the categories of information that have been classified. Two law suits on this matter have been filed by the Center for Legal Resources and the Institute for Public Policy and are currently pending in the court.

This lack of transparency is directly linked to the increase in the level of corruption in Romania. Thus, the two tools adopted for better informing the public about the social status of an elected official (the declaration of assets and the declaration of interests) remain useless since the content has remained too general and only limited to information on the public officials themselves, while the real interests are carried out by their relatives.

Judiciary enforcement. Most of the requests for the information of public interest towards the Romanian authorities are not answered or not answered entirely, in spite of the fact that Romanian authorities claim that they give access to any sort of information of public interest to everybody asking this sort of information.

It is interesting to note however that in several instances the courts have decided in favor of the NGOs that required public information. This has been the case of the Romanian Helsinki Committee and of the Center for Legal Resources which currently has more than 30 cases in courts promoted on its own name and in partnership with other NGOs, such as the Institute for Public Policies, The Romanian Institute for Contemporary History, The Alburnus Maior Association, The Partnership for Equality Center, etc.

Recommendations. Based on this experience the conclusion is that access to information of public interest is not correctly applied due to the practice of the public authorities but also due to the imperfections of the law. Several amendments would be necessary in order to improve the implementation of the law:

- **Serious sanctions** for the authorities that are breaching the law; to give the courts the possibility to bring in sanctions against the public clerks or other persons who do not observe the law. At the moment, the only sanction provided by the law on judicial review of administrative procedure consists of a penalty of 500 lei/day of delaying the disclosure of the information. Not only is this penalty extremely small, in terms of the amount of money (approx 1,5 euro cents) but it also may be applied only in a second trial, if the authorities do not enforce the court ruling to disclose the information. The provisions on material or moral damages are totally missing; therefore the courts have limited powers. For example, based on a ministerial order from 2000 the Ministry of Justice requires a tax from anyone who seeks information regarding the Registry of Associations and Foundations, although the Law 544 from 2001 makes clear that the information should be provided for free. The court ruled against the Ministry and clearly stated that the mentioned order is no longer in force, being abrogated by the Law 544 from 2001. Nevertheless, the Ministry continues to ask money in order to provide such information.

- The **obligation to disclose information** for all state and private companies that provide public services or utilities such as electricity, water, gas public transportation, etc.

- **Clear definitions** of the exceptions from the principle of access to information of public interest, like: state security, the authorities' debates, loyal competition principle, personal data, the judiciary procedure, youth protection. In this moment, due to lack or vague definitions, their interpretation is entirely in the hands of administrative authorities. Fore example, when the Senate and the Chamber of Deputies have classified a large category of information regarding the management of public funds, they invoked one of the exemptions stipulated by the law, namely the national security, although there is no

connection between for instance, how much money the MPs spend when traveling abroad or within the country and national security.

- **Clarification of the aspects regarding the public participation in the decision making process** when environmental issues are managed by the public authorities. Although the Aarhus Convention and the European legislation regarding Environmental Impact Assessment were adopted, they are not properly applied, many private societies continuing to function without an environmental approval or without real public consultation. During the public debates session, documents regarding private company activity are not disclosed, because exemptions like commercial interest are invoked (i.e. in the case of Rosia Montana Gold Corporation, the Center for Legal Resources asked for the exploitation/exploration licenses and the connected documentation from The National Authority for Mineral Resources denied the a request, the commercial interest being invoked; the case is pending in the court).

6. ISSUES RELATED TO FUNDING OF POLITICAL PARTIES

The law on political party financing is a progressive step toward transparency in party funding and its management, but several amendments are still needed to ensure its effectiveness.

Areas for amendment. The actual party spending on the recent local electoral campaigns in Romania has clearly showed that the law on political party financing needs further amendments, especially for the provisions regarding the threshold of the state allocations for a party. Another serious aspect of potential revision regards increasing the area of competence of the Audit Court (Curtea de Conturi a Romaniei), which is the only body responsible for the control of party funds, to expand its reach from investigations of the public sources to private contributors, if information about relation with party finances is considered relevant.

Local management weaknesses. From its early effects, the law proved to be a step further towards transparent management of the political party funds in Romania. The most visible weakness though refers to weak management within the parties, especially at the local level. The financial obligations of a not-for profit-body, such as a party is, are not correlated sufficiently with the Romanian economic legislation and the practices differ significantly from county institutions to county institution, which creates confusion at the level of financial management in a party branch.

A more active but slow Audit Court. Due to the more proactive role that the Audit Court has played during this local electoral campaign, almost all major parties have appointed and registered a *treasurer* (party electoral finances manager), as the law requests. The Audit Court has also carefully monitored whether the candidates have reported their electoral spending after being elected, as part of the validation process. At the same time, observers have noticed that the Court actions are rather contemplative than oriented towards solving issues (by approaching other investigative and control bodies) the moment they occur. The evidences provided for by media and NGOs on enormous abuse of public property and public funds for and during the electoral campaign have found the Audit Court unequipped to deliver a prompt reaction.

Synchronization between the electoral bodies and other control institutions (such as the Prosecutor Office) are required in order to ensure an authentic control of the funds spent by the party from both public and private sources.

CHAPTER II

ANTI-CORRUPTION MEASURES

1. FUNCTIONING AND INDEPENDENCE OF PNA (NATIONAL ANTI-CORRUPTION PROSECUTOR'S OFFICE)

The National Anti-Corruption Prosecutor's Office has failed to produce the results for which it was created, mainly due to a focus on small cases of corruption. Controversy abounds regarding the need for this institution, its place in the hierarchy, as well as some of its decisions.

Independence and accountability. One critical topic that arose within the past year was the need for PNA independence. The leadership of Office has referred to its accountability to Parliament as being not only unnecessary, but also burdensome, as it increases the amount of work the organization needs to deliver regularly. Some people perceived this statement as an attempt to evade accountability to Parliament, in order to remain subordinated only to the Government.

Alleged political pressure. One controversial decision of the PNA was to re-start the investigation of Traian Basescu, leader of the Democratic Party and general mayor of Bucharest, a couple of months before his candidacy for a second term as mayor of Bucharest, thus keeping him busy with several hearings, and although he has been investigated several time before.

Small potatoes. In the context of nationwide corruption, many analysts have perceived the creation and the first steps of PNA as working for increasing the Government's positive image rather than genuinely fighting corruption. From the very first, the PNA activity's was associated with small cases of corruption, mostly involving policemen; more recently the institution has touched on a number of more sensitive cases referring to some central politicians and local barons, although it did not finalize any of them and has never touched high-ranking politicians and government officials. It is obvious that PNA would become increasingly important, as it gathers information about corruption among high level politicians. The latest report of the PNA was so critical, because of the important names that were mentioned therein, that the leaders of the two Chambers of Parliament decided not to read and speak about the report in front of the assembled MPs in order to avoid political accusations during the electoral year.

A recent amendment to the law would lead to an increase of PNA's case load, since from now on the institution will handle corruption cases above 3,000 Euro (as compared to 100,000 at the beginning and 10,000 subsequently). This amendment reinforces the PNA's focus on small, not high corruption, and renders questions regarding the need for such an institution legitimate.

2. ASSESSMENT ON "SACKING" HILDEGARD PUWAK, SERBAN MIHAILESCU AND LOCAL BARONS

The behavior of authorities in several documented cases of corruption in high-ranking central and local officials uncovers lack of genuine commitment to the fight against corruption, and concern solely for the public image of the party.

Delayed decisions and lack of further investigation. From the way the Prime-Minister has avoided addressing allegations of corruption regarding high officials in the public administration

public opinion has learnt that the Government was far from being committed to fighting corruption. Although the media provided evidence of the misdeeds of members of the Cabinet (Minister of European Integration Hildegard Puwak and Secretary General of the Government Serban Mihailescu), a political decision to remove them from office was reached only several months after. The dismissal of the two high officials was not followed by legal investigations to clarify the accusations regarding the abuse of the public position to gain personal benefits. On the contrary, the two high officials, who were asked to resign, were immediately offered important positions and given responsibilities within the party. This signals to the public that corruption perpetrated by members of the ruling party is tolerated, and they are on a different level from ordinary citizens. Furthermore, it seems to indicate that the dismissals were purely for the sake of the Government's good image, especially since the political replacements were not followed by transparent, rigorous juridical investigations of the allegations of corruption.

Purely formal disavowals. Party decisions regarding the local barons, suspected of abusing the public resources and of being involved in cases of corruption, create the same feeling of "cosmetic" decision-making, rather than deep, genuine concern. The political decision ultimately taken was superficial and based only in some political aspects, and not on legal responsibility. The local barons are still sheltered by the ruling Social Democratic Party, although a few of them were banned from running in the local elections. For instance, Daniel Marian Vanghelie ran as independent, but he had the full support of PSD. The PSD nominee, Catalin Stochita had to compete against Vanghelie but he did not engage in electoral campaigning (he had no outdoor, no TV or press ad, no meetings with the citizens and spent 0 lei). In fact this situation gives rise to another legitimate question regarding the presence of two PSD candidates for mayoral office in the same sector (5) in Bucharest, which is clearly against the law. Recent PSD statements made clear that PSD won the mayoralty of sector 5, accepting that despite his "self-suspension", Vanghelie has always been a party member.

The "local barons" problem is a phenomenon that cannot be eliminated only by changing the people in power. The public administration laws have to be amended and added to in order to reduce the arbitrary of the county councils presidents' decisions. Recent negotiations for the position of County Councils' Presidents, often contradicting the result of the local elections, are a proof that distributing local public resources is a real business and is in the hands of these local barons.

3. ASSESSMENT ON THE IMPLEMENTATION OF THE 2002 ANTI-CORRUPTION LEGISLATION

Touted as a success, the anti-corruption legislation stumbles on the lack of sanctions, narrow definitions, and inefficient structures.

The anti-corruption legislation was publicly touted as a success by the Government, although from the very beginning serious criticism has been levied about the inefficiency of its enforcement in the absence of sanctions.

Vagueness and unwillingness to investigate. Right after the adoption of the anticorruption legislation, the regular reports of the nongovernmental associations have stated that the provisions regarding the transparency of assets and interests of the elected members at all levels of the public administration are not contributing to reducing corruption. The two legal forms that were supposed to be filled in by the elected officials were vague enough to prevent tracking the real interests of the politicians, which are in fact overseen by the relatives of the respective politicians. Like in previous cases involving politicians, the control bodies were rather unwilling to start investigating the allegations of the media and NGOs. Clear evidence that the politicians only declare some of their real interests were not followed by investigations by either the Assets Control Commissions at the county level, or the Prosecutor's Office. The very few

cases of corruption investigated target individuals who have somehow lost political support, while the big routes of corruption seem to be of no interest whatsoever to the investigative bodies. Journalists who have committed to pursuing investigation into cases of corruption have started to suffer both physically and professionally.

The efforts to collect and present information related to corrupt politicians (or politicians who know of cases of corruption) that the media and NGOs are frequently involved in, meet with practically no reaction from the enabled control institutions. The only small reaction was to amend the legislation, with a somewhat more precise format for the declaration of assets, but again with no practical effects in investigating the cases of corruption in order to sanction it from its roots.

Formal and inefficient control bodies. Although Law no. 161/2003 modified Law no. 115/1996 on the declaration and control of the assets of dignitaries, magistrates, public servants and of persons in leadership and control positions, the prescriptions regarding the functioning of the Assets Control Commissions of the Appellate Courts were not improved. The Assets Control Commissions continue to be purely formal structures. They are poorly organized and their activities have no impact at all against corruption. For almost 94% of the complaints, the commissions concluded that the wealth investigated is justified (dismissal ordinance) and no dignitary was ever controlled by these commissions. The citizens are prohibited to complain to the Assets Control Commissions. The citizens may complain to the Prosecutor's Office, but the punishment for the offence of "lying about the illicit gain of wealth" is from 6 month to 3 years of prison according to the article 35 of Law 115/1996. In eight years, only one citizen had the courage to put forward a complain to the Prosecutor's Office on the basis of the law 115/1996, but his/her initiative was in vain, since the office rejected the complain, without passing it to the Assets Control Commission, on the grounds that "a disproportion between the wealth and the income was not found."

Omissions regarding conflicts of interest. Law no. 161/2003 has unacceptable omission because conflict of interest provisions are applied only for dignitaries and civil servants. The hospital directors and the directors of the companies owned by the state or by the local public institutions do not have to avoid conflict of interests because they are neither dignitaries nor civil servants. Such omissions persist in the Emergency Ordinance no. 60/2001 concerning public procurement, because the legal provisions do not exclude from the auctions organized by the public institutions the firms owned by the wife/husband and the first-degree relatives of those who prepare the offer and evaluate the proposals. Different administrators of public assets are therefore still draining public funds through family and friendship.

The conflict of interest issue is the source of many deeds which can only be described as corruption. The definition of conflicts of interest is vague and covers only a couple of persons (husbands, wives, children) but not other relatives, nor business partners, or party friendships. In some cases it covers less than that. For example, in recent cases against the Prime Minister and the Secretary General of the Government regarding their wives' affiliation with business companies or NGOs, the two high officials refused to provide such information stating the law does not require them to do so, although the law mention that they are not allowed to take decisions in case of a conflict of interest. The legitimate question is how can one identify a conflict of interest in the absence of elementary information? The Court ruling endorsed their defense.

One general conclusion is that the level of corruption has increased as the politicians have been engaged in electoral campaigns and needed resources to finance the campaigns. Unless serious changes will be brought to this law and its enforcement mechanism, the law will merely provide a context for abuses of position and authority, thus encouraging corruption.

CHAPTER III

THE JUDICIARY

1. INDEPENDENCE OF THE JUDICIARY

The independence of the judiciary is still a remote goal, as the interference of the executive in the funding and decision-making persists, and is even legitimized by pending legislation.

Laws and regulations. The independence of the judiciary is related to a very important package of three laws: the law of the Superior Council of Magistracy (SCM), the law on Judiciary Organization (JO) and the law on the Statute of Magistrates (SM). Nevertheless, the reform of the judiciary with respect to its independence will not be achieved automatically once these three laws will be enacted. Other laws are necessary, like the Public Ministry Law, the Statute of the clerks or the Magistrates' remuneration law alongside with other procedural statues.

In February 2004 an alliance between several civic and human rights NGOs and the Romanian Magistrates' Association, the Alliance for a European Justice in Romania (AJER), was established, and due to its advocacy the Statute of Magistrates and the Judiciary Organization laws were stopped in the Chamber of Deputies (although they had already been passed by the Senate and the Judiciary Commission within the Chamber of Deputies). The main reason was to have a genuine public debate on the law of the Superior Council of Magistracy and to adopt this law, on the institution most important to judiciary independence, before the other laws.

Several critical aspects

- In spite of the public commitments of the Minister of Justice and of the principles agreed upon by SCM members, magistrates and civil society representatives on reducing the powers of the Minister of Justice, and increasing the powers of the SCM, the version adopted by the Government opted for different solutions without any explanation;

- Moreover, in late June 2004, during its last days of activity, the Senate completely changed the draft law, thus keeping **the Superior Council of Magistracy** in a position similar to its present one, namely **very vulnerable to political influence and pressure**; due to recent amendments to the Constitution the Senate has the final decision power;

- Although all previously agreed versions, including the one adopted by the Chamber of Deputies, expressly provided for the magistrates' permanent activity within the SCM during their mandate, without the possibility to perform as active judges and prosecutors in their courts, the Senate changed this article, expressly mentioning that only the SCM President and Vice-president will be banned from performing as judges or prosecutors; this means that all the other magistrates SCM members will continue to work in their courts and attend the SCM meetings only when asked to, and therefore lack a daily contact with the institution's activity; **the SCM will thus be left in the hands of its leadership and of the technical staff**;

- A new category of SCM technical and administrative staff was established, namely the **general inspectors within the "judiciary inspection", without defining their role and powers**, thus leaving room for different interpretations and abuses;

- Due to the 2003 amendments to the Constitution, the Minister of Justice has become a voting member of the SCM (Art. 133);

- Moreover, **the Minister of Justice has voting rights not only in SCM plenary meetings, but also in the meetings of both sections (for judges and prosecutors)**, which contradicts the principle that the Minister should not be involved in the career of magistrates, and means that a political appointee and representative of the Executive will have a say on judges' careers. The fact that he/she will have only one vote is of little relevance, bearing in mind the relentless political pressure on the judiciary and the SCM in particular;

- The SCM cannot ensure the adequate functioning of the judiciary (Art. 3, SCM) as long as it does not have **the budgetary competence** for it. In fact, the SCM manages only its own budget and those of the National Institute for Magistrates and the National School of Clerks;

- **The budget of the judiciary power**[1] (all the courts, except the High Court of Cassation and Justice), which is considered to be a separate power in state, is **managed by the Minister of Justice**, a political person, member of another power in the state: the executive (art. 58 SCM). At the same time, it is worth noting that the General Prosecutor, who is administratively subordinated to the Minister of Justice, manages the budget of all the prosecution offices (art. 67 JO), thus enjoying and exercising more powers than the judiciary;

- A disparity has been established between the National Anti-Corruption Prosecution Office which, with less than 100 staff, has its attributions, competence and functioning established by a special law, while provisions for all the other prosecution offices are to be settled by the courts' law (art. 83 SCM);

- The SCM is supposed to be representative for the judiciary. However, this principle was infringed by giving only one seat in the judge section for the judges from first instance courts (more then a half of the judges), while the prosecutors from the National Anti-Corruption Prosecutor's Office also have one seat (art. 5, 6 SCM);

- Against the Constitution, which does not define civil society, the SCM law allows only the associations and foundations having as exclusive "object of activity"(!) the defense of human rights to nominate their representatives; at the same time the requirement of minimum 18 years experience in legal field, not only affects the representativeness of the civil society, but is also discriminatory when compared to 6 years of legal experience required for magistrates (art.20 SCM); while the law specifies conditions and procedures for the election of magistrates to SCM, in the case of civil society everything is left to the Senate regulations (art. 21 SCM);

- The staff of the SCM is to be selected through examinations or contests, with the exception of **the staff from the Ministry of Justice and the General Prosecutor's Office, which will be simply taken over** (art. 68 SCM);

- The leadership of the Appellate Courts will consist of the presidents, vice-presidents and elected judges, as well as "judge inspectors", although the leading function should not be mixed with the control one (art. 52 JO).

[1] *Note: judiciary power means all the courts, and the judiciary authority means the courts, Public Ministry (the prosecution offices) and the SCM.*

Having in mind all the changes that either the Government or the Senate made at the end of June, leaving citizens and civil society without any possibility to react in time, legitimate questions cab be raised regarding the Government's good faith when announcing consultation with civil society.

2. CORRUPTION WITHIN THE JUDICIARY

Corruption is a very sensitive issue in the area of justice and perceptions on corruption within the judiciary are very high, people ranking judges as the second or the third in this respect. It has to be mentioned that so far no statistical data is available and no comprehensive study has ever been carried out.

Integrity and resistance to corruption. The Ministry of Justice tried to assess the judiciary's integrity and resistance to corruption, although the methodology employed has been highly questionable: questionnaires sent to the courts' presidents who distributed them to the judges under their authority, as well as collected them afterwards. 3403 judges, representing over 99% of the magistrates in the 15 Appellate Courts in the country participated in the evaluation. According to this report, when questioned if, in the activity of judgment, they have been subject to pressures of any nature, 83% of the judges answered "yes", stating that most frequent forms of pressure have been caused by media (37%), followed by political pressures (19%), direct influence (16%) and the pressures exerted by the administrative leadership of the courts (6%). The report showed that in order to ensure the capacity of the judiciary system to resist illegal pressures, safeguards for independence must be provided. From this point of view, 81% of the judges believe that currently safeguards are either insufficient or non-existent. At the same time, 94% of judges said that there is no protection regarding possible risks which may occur during their activity.

CHAPTER IV

PROTECTION OF HUMAN AND MINORITY RIGHTS

1. FREEDOM OF EXPRESSION

Freedom of expression is severely curtailed by both political and economic pressure, to which the broadcast media, the country's primary source of information, is most vulnerable. Interpretations of legislation in manners that clearly obstruct freedom of expression and of press are constant. The relatively high number of non-prosecuted cases of physical threat and attack against journalists still casts serious doubts on Romanian authorities' commitment to protect and guarantee freedom of press.

Revision of the Penal Code: "insult", "calumny against private persons", and "calumny against officials". The Penal Code was adopted at the end of June 2004. While "insult" was eliminated, "calumny" continues to be a criminal offence against human dignity, its definition being: *"publicly stating or imputing, by any means, of a certain fact regarding a person, and which should it be true, would expose that person to a penal, administrative or disciplinary sanction or to public contempt "*; the punishment being a penal fine of 10 -120 days. The total amount of the fine is established by multiplying the number of sentenced days (which depends on the gravity of the crime and of the offender) by a sum that represents the cash equivalent of each sentenced day, which sum is determined by taking into account the financial possibilities of the offender. The daily sum can range from 100.000 lei to 1.000.000 (2.50 EURO to 25 EURO). The fine may not be transformed into days of imprisonment, but the criminal offence will continue to be inscribed in criminal records, thus having long term consequences for the convicted person. At the same time it must be emphasized that the possibility of passing sentences that result in very high fines imposed to journalists convicted of libel or slander, can easily reach levels disproportionate to the journalists' incomes (in most of the cases 200 EURO average/month if not less) thus leading to self-censorship and consequently to limiting editorial freedom.

Continued "political" financing of media (i.e. debt write offs). Previous EC Regular Reports already remarked upon the Ministry of Finance's practice of re-scheduling long overdue payments owed to the state budget by privately-owned broadcasting corporations, a practice which continued in 2004. Some payments have been initiated and/or completed - mostly by smaller broadcasters. These can be deemed as virtually insignificant for the overall situation of the broadcast media vis-à-vis the Government, as the private TV broadcasters holding the highest market shares are still heavily indebted to the state budget (in the form of unpaid taxes and other public contributions, e.g. employer and health insurance payments). There have been no official discussions about designing specific debt recovery plans, placing most of these companies in positions where the continuation of their functioning is virtually dependent on payment deferrals granted by top governmental decision.

There are clear indicators that the special treatment given by fiscal control bodies to media companies has resulted in a *de facto* editorial self-censorship within TV stations The restrictive influence on the editorial agenda and reporting style of most private TV stations has already been verified by monitoring reports carried out by independent media watchdog organizations, as well as by other domestic and international NGOs.

Various independent sources have repeatedly indicated the significant deterioration, in both qualitative and quantitative terms, of the information delivered to the Romanian public by most private TV stations, while covering issues of critical interest (such as domestic political

environment, institutional performance in fighting corruption, accession negotiation, criticism coming from various EU bodies, lagging behind in justice and administration reform, etc.).

To this, one has to add the Public TV situation, since the station either avoids presenting controversial issues that may put the Government in difficulty or presents them in a manner that is inconsistent with the truth.

Effects. Some noticeable effects in the overall broadcast media environment have been:

- opposition parties get significantly less air time than the governing party, as independent monitoring reports indicate;
- the reporting style generally favors the Government and its ministers;
- most of the editorial agendas present governmental achievements;
- hardly any criticism of the Government (by the opposition, domestic civil society organizations or foreign institutions) is allowed on air;
- issues which potentially detrimental to the image of the Government are avoided or presented in a distorted (positively biased) manner (*i.e.* the critical episode at the beginning of 2004, when the Commission for Foreign Relations of the European Parliament debated the Nicholson-Oostlander report, which seriously shook the negotiation process with Romania was presented in a strikingly positive manner by the broadcast media, as compared to the print media).

Another effect is the gradual increase of the quantity of tabloid type news ("infotainment" or "soft news") that most of the private TV stations choose to broadcast, thereby avoiding issues which may prove embarrassing to the Government.

The practice of continuous debt rescheduling is in fact an effective state aid scheme, granted in this case in exchange for the political compliance of the media outlets. While media pluralism is to be preserved and encouraged, private broadcasters should be encouraged to seek private market financing and financial consolidation and not be allowed to benefit from politically-motivated state subsidies.

Election coverage: abuse and constraints. Developments surrounding the organizing of the local elections in June 2004 also indicated a different sort of pressure impinging upon the freedom of press and information. The decisions and actions taken by two institutions revealed a constant tendency to restrictively and sometimes questionably interpret legislation regulating media coverage of the electoral campaign, as well as general media activity during the electoral period.

Several provisions of Law 67/2004 on local elections (mainly Art. 57, Art. 58, and Art. 67) have generated controversial interpretations by electoral bodies such as the Central Electoral Bureau, broadcast media regulatory bodies, namely the National Audiovisual Council, political parties and the police. The lack of precision of these key articles allowed for interpretations deemed abusive by journalist organizations and human rights NGOs and led to actions clearly infringing the freedom of media and expression.

Notable was the decision of the **Central Electoral Bureau (CEB)** to institute a 48 hour ban on political issues prior to the elections day. While the interdiction to publish or broadcast political advertising and electoral debates as such during the period of electoral silence is a well-established norm with the Romanian media, decision no. 85/04.06.2004 of the CEB attempted to institute a ban on *all electoral-related journalistic materials* (comments, OpEds, feature stories, etc.). CEB insisted on defending the legality of its decision when confronted with general protest by journalists, grounding it on its very peculiar interpretation of the provisions of the new Law 67/2004 on local elections. It should be mentioned, first of all, that neither Law

67/2004 on local elections nor other piece of legislation currently in force gives CEB jurisdiction on the media or allows any form of regulating the content of journalistic materials.

In the aftermath of elections, harassment of the media on election-related issues continued. Editors-in-chief and directors from Radio Total and daily Evenimentul Zilei reported having been approached by police officers and requested to deliver personal information on certain journalists who had signed materials deemed as "sensitive" by PSD representatives and hired campaign managers. Following a complaint filed by PSD representatives, Radio Total was fined by the National Audiovisual Council for broadcasting on elections day an interview with a well-known civil society figure expressing critical opinions regarding the state of the infrastructure and environment in Sector 3 in Bucharest. The complaint was also filed with the Bucharest Municipal Electoral Bureau, claiming the piece of journalism to be "damaging "to the PSD mayor of District 3 who at the time was running for a second mandate. The complaint was filed under the PSD interpretation of Law 67/2004 as being "electoral campaign", and it surprisingly became grounds for preliminary investigation by the criminal police department, in view of possible penal investigation. Even if broadcasting citizen criticism regarding the state of the public domain without specifically naming a candidate could *in extremis* be judged as a violation of the law, it must be mentioned that, according to Art. 99 of Law 67/2004, such a violation is a non-criminal offense, and thus it cannot be grounds for a criminal investigation by the police. Actions taken by the police in this case, following the complaint of the PSD representatives, have been characterized as clear harassment and political pressure by the general manager of the radio station and other journalists. They also raise the question of how was it possible to have a double penalty for the same deed, since the fine required by the NAC had been already collected.

The **National Audiovisual Council (NAC)** – the regulating authority of the broadcast media – also made a series of controversial decisions and recommendations that impinged upon the freedom of press and information. Its decisions also created indirect and direct disadvantages for some of the political parties running in local elections. NAC decided to ban "negative political advertising" during the campaign – thus drastically limiting the capacity of opposition parties to critically comment on important issues such as the corruption record of some governmental figures which normally should have been part of the campaign. As in the above case of the CEB decision, the ban was grounded on a more than questionable interpretation of Law 67/2004 on local elections (art. 60 and 64) regarding requiring proof of *"possible allegations with penal or moral incidence with regard to other candidate"*. While the ambiguity of these provisions remained largely disputed, the NAC did take action and banned several TV and radio spots. Such excessive decisions of the NAC created confusion among broadcasters and led to further self-censorship. The overall substance of the electoral debate was affected by this restrictions imposed on the broadcast media by the NAC overstepping its prerogatives.

Cases of physical violence against journalists. Throughout the last year, there were at least 16 attacks on journalists. Governmental assurances that the cases would be *"vigorously and firmly dealt with"*, only arrived after external outcry; such is the notorious case of the Timisoara – based investigative reporter Ino Ardelean, severely beaten in December 2003. Suspicions of cover-up still stand, particularly in this case, as well as in others, since investigations in all 16 cases did not lead to any arrests or convictions. Moreover, because the Government is keen to show the EU that it complied with its own commitments of the "to do list", recent actions have proven that there is a clear intention to make people with no connection with the journalist responsible for the attack against Ino Ardelean.

Neither is there any follow-up in the investigation of the death of journalist Iosif Costinas whose earthly remains were accidentally found in 2003, one year after his disappearance. Costinas was very critical of the government and was writing a book about the underworld in Timisoara. He had investigated sensitive issues, including mystery killings during the 1989 revolt against

the communist regime and the current presence of members of the old communist secret police in top public and private business positions. Police assumed Costinas had killed himself with an overdose.

2. ANTI-DISCRIMINATION

Discrimination continues to be a problem, as the institutions which must safeguard minority rights are weak and indecisive, and legislation continues to include discriminatory provisions or offers inadequate protection.

Amendments were made, changes are still needed. In 2003 and 2004 the anti-discrimination law has been amended, and due to the sustained advocacy of several NGOs with the Human Rights Commission of the Senate, and in spite of some opposition expressed by the National Council for Combating Discrimination, several improvements have been made. Nevertheless, the following essential elements of an efficient anti-discrimination mechanism are still lacking:

- the shift of the burden of proof,
- the extension of the discrimination criteria (including disability instead of handicap),
- reasonable accommodation,
- accepting statistic data as evidence for indirect discrimination,
- the definition of mediation,
- ensuring effective compensation for the victim throughout the NCCD's procedure (presently the NCCD can only prescribe a fine which goes to the State budget.);

The NNCD and its functioning. Furthermore, there is a need to regulate the institution of NCCD throughout a special law ("lege organică"), instead of government ordinance or government decision, thus ensuring some stability to the entire mechanism. These norms must guarantee the NCCD's independence and the institution's departmental structure in order to ensure the real possibility of efficiently and independently fulfilling the numerous NCCD attributions.

Regarding the NCCD's activity the major problems relate to:

- the institution's very low visibility – only 33% of the population has heard of the National Council for Combating Discrimination;
- the lack of transparency – presently the NCCD's jurisprudence is not available to the public. Only a few NGOs are in the possession of the NCCD's jurisprudence, some obtaining it with great difficulty invoking the law on access to public information; the brochure the NCCD issued has only resumes of the cases, cannot be updated on a monthly basis and was not distributed through book stores or NGOs, thus making public access quite difficult;
- the NCCD's activity in preventing discrimination is minor;
- the text of the NCCD's decisions is incondite from the point of view of: presenting the facts, references to the NCCD's local investigation, the NCCD 's argumentation of the solution.
- many of the NCCD's decisions lack the motivation regarding identifying a certain attitude as discrimination or not, which makes them vulnerable when contested before the courts;
- there is a need to solve the conflict of authority in cases of discrimination between the NCCD and other institutions such as National Audiovisual Council, Ministry of Labor, Family and Social Solidarity, Territorial Labor Inspection, Ombudsman;
- there are no public policies on anti-discrimination initiated by NCCD.

3. NATIONAL MINORITIES

National minorities are still suffering form discriminatory legislation and inadequate implementation of existing regulations.

The law on Local Public Administration. An example of the shortcomings in the implementation of the Law on Local Public Administration relates to minority rights in ***Cobadin village***. There, a group of Tartars and Turks, members of the Cobadin-branch of the Democratic Union of the Muslim-Turkish Tartars, has petitioned for the use of their mother tongue in the village. There are 1494 Tartars in Cobadin, and another 584 individuals are Turks. Given that the total number of inhabitants is 6.424, Tartars and Turks account for more than 32% of the population. In ***Cobadin commune***, (the higher administrative unit) there are 2,078 Tartars and Turks, which means 22% of the entire population of 9,116 inhabitants. It follows that the percentage of speakers of the minority language is higher than the 20% threshold imposed by Law no. 215/2001 for the use of a minority language in administration. The 2002 Census mistakenly calculates the number of Turks/Tartars as lower than 20%, and therefore marks them as unable to petition for the rights stipulated in the law. However, all the above mentioned Tartars and Turks have confirmed in writing that they belong to the afore-mentioned minorities, and wish to have Turkish/Tartar names for the streets. The mistaken figures are nevertheless used to deny the Turkish/Tartar minority their legal rights. It is clear that the Census is considered a fixed reference and no dynamic of the population is taken into account when the implementation of minority rights is considered.

Partial progress for Csangos. In the last year, for the first time, school courses were approved for Hungarians Csangos who asked for learning modern Hungarian. There has been no change in the attitude of the Roman-Catholic Church of Moldavia. None of the requests on approving religious service in the mother tongue was considered by the Iasi Bishopric.

Still no recognition for Aromanians. Aromanians have repeatedly expressed several times their desire to be recognized as a "national minority", but no response has ever been given to this demand. Several times, the Government and minority associations have discussed the need of a "law on national minorities" by which rules of recognizing new minorities (i.e Aromanians including) would be defined, but so far there is no genuine commitment to adopt such a law although, bearing in mind the recent ban on minority associations to run for election, it is extremely necessary.

3. DISCRIMINATION OF NATIONAL MINORITIES IN THE LAW ON LOCAL ELECTIONS

The Law on Local Elections contains discriminatory provisions related to national minorities and their equal right to run in local elections, and has lead to reduced representation of national minorities in local structures.

Subjective definitions. The bill unconstitutionally defines national minorities as being those who are represented in the Council of National Minorities, although the existence of a national minority expresses an objective reality, therefore the minority cannot be defined by its being or not included in a formal administrative structure whose existence is subjective to political will.

Discriminatory criteria. The organizations of minority citizens which are not represented in the Parliament, should prove that they represent a minimum of 15% of all the citizens who declared themselves as belonging to that minority during the most recent census. The large minorities have to comply with additional prohibitive rules. The organizations of citizens belonging to these minorities, other than the ones which are already in the Parliament, have to provide a list of at least 25,000 members, living in at least 15 different counties and Bucharest, and at least 300

members in each county. Minorities are thus forced to fulfill a criterion of territorial dispersion, which is not sensitive to the particularities of an ethnic minority, whose members usually occupy a small territory (for instance the case of Ukrainians and Germans).

It is thus that, for the first time in Romania's post-1989 democratic history, the associations of national minorities (with the exception of those represented in the Parliament) were either unable or not allowed to participate in local elections. The consequence is a lower representation at the local level, where several associations, particularly of Roma local communities, were previously represented.

4. FREEDOM OF RELIGION

Mandatory study of religion and intolerance of other faiths still characterize the climate in Romania.

Lack of alternatives. The study of religion in schools (all levels) has remained mandatory and in many instances the only religious education provided for has been the Orthodox one, regardless children's faith. In some cases the Orthodox clergy uses its authority in the religious education in schools to criticize and insult other religious denominations (cases in Buzău, Bucharest).

After the recognition of Jehovah's witnesses by the Ministry of Cultures and Religions based on a decision of the High Court of Cassation and Justice, the Orthodox Church publicly complained against the recognition of this church.

Disregard for rule of law. The most controversial issue of 2004 has been building of the Cathedral of National Redemption in Carol Park in Bucharest. It is also an example of the violation of the rule of law by the Government. Both Government Decision no. 468/2003 and the decision of the Bucharest General City Council concerning this issue were adopted in breach of the Romanian Constitution, and of Law no. 213/1998 on the legal status of public property. All government decisions on the matter at hand and the Order of the Minister of Culture were adopted in breach of legislation on the protection of historical monuments (in particular Law no. 422/2001, and Art. 5 of the Granada Convention ratified by Romania in 1997). The Minister of Culture has shunned the Committee for Historical Monuments, the only official body entitled to decide on matters of national heritage. In an attempt to confront citizens with a *fait accompli*, the authorities are actively pursuing their plans to dismantle the Carol Park mausoleum and to build the Cathedral of People's Redemption. The co-operation between the Romanian Orthodox Church and the ruling party, which controls the public institutions involved, entirely disregarded the law and the wishes of the population of Bucharest which has been consulted through some opinion polls and on the mayoralty website.

The MISA case. No complaint against public authorities, documented as responsible for the blatant violations against MISA members and sympathizers, was solved. In June 2004, several people working with MISA were invited to the Police office, and asked to "denounce" the criminal activities of MISA, which makes questions regarding the legality of the police and prosecutor's intervention even more legitimate.

The Romanian Intelligence Service (SRI) against freedom of religion. From time to time the SRI publishes on the institution website allegations on the danger represented by different minority religions which it calls "sects". One example relates to the report posted on the website "The extremist antecedents of Ananda Marga" which formulates a number of accusations against this religion. Ananda Marga complained about SRI, the media hosted a few discussions about the whole issue, and the accusations proved to be false. Nevertheless, the allegations are

still on SRI website. More recently, another minority religion, Copiii Domnului (God's children) complained about SRI accusations and a human rights organization launched an investigation. Once again, the accusations turned out not to be true. But the fact remain, that such activities of SRI are an unlawful interference with the right to freedom of conscience and religion.

5. EQUALITY BETWEEN WOMEN AND MEN

Equality between men and women is still implemented on paper only, if that, with the critical issues of domestic violence and trafficking still woefully unaddressed.

Domestic Violence. Despite the adoption of the *Law No. 217/2003 on preventing and combating domestic violence*, the secondary legislation aimed for putting the law in place is chaotic or even lacking. The National Agency for Family Protection lacks specialized personnel and infrastructure, and therefore its existence is symbolic. There is no set of indicators developed by the state for monitoring and following up developments in the field. According to a national representative poll carried out in August 2003 by the non-governmental sector, during the twelve months before the survey was carried out about 800.000 women have frequently been subjected to domestic violence, over 370.000 children (aged 0-14) frequently witnessed insults and swearing between their parents and over 340.000 children witnessed physical violence between their parents.

Trafficking in Human Beings. Comparing to 2002, the 2003 criminality rate in relation to trafficking in human beings is 70% higher. However, in 2003, in relation to trafficking in human beings criminal offences, out of 329 persons put on trial, only 49 were sentenced. For the period September 2003 - May 2004, out of 29 criminal investigations only 2 have been finalized. There is a lack of judiciary personnel specialized in the field. According to the data released by the Government, only one police woman in each county is trained in addressing and assisting trafficking in human beings cases. There is no state system of prevention measures at the national level.

More recently, the media (including the public television) extensively reported on trafficking in women activities carried out by members of the police force, but the reports have not been followed by any sanction against the perpetrators, who were merely reassignment to other positions.

Putting gender mainstreaming into practice. If in the Member States and at EU level gender mainstreaming has started to be implemented along with specific measures, Romania completely lacks the gender mainstreaming policy as part of the obligation to promote equality between women and men. Gender equality indicators aimed to assess progress in different policy areas are absent. In this regard, the implementation of the equal pay for work of equal value principle is scanty, as the indicators foreseen to be elaborated according to the *Law No. 202/2002 on equal opportunities between women and men* are missing.

Promoting balanced participation of women and men in decision-making. There is a persisting imbalance between women and men in decision-making positions at the national level. There is no progress within the framework of legal provisions on enhancing initiatives to increase women's participation in decision-making, other than affirming the principle of the need for a balanced participation of women and men in political decision-making. The amendments to the *Law No. 67/2004 for the election of the local public authorities* aiming for putting the principle in practice through creating concrete means for women's presence on the eligible seats on the election's lists were rejected by the Parliament.

Reconciling work and family life. Romania does not promote any scheme for sustaining, or extending parental leave. Such a lack of action jeopardizes the policies aimed to raise the employment rates for women and underpins the black market employment. The childcare services and the care facilities for other family dependants are in a failure situation.

6. DEVELOPMENTS IN THE TREATMENT OF THE MENTALLY HANDICAPPED

The legislation on the rights of people with disabilities (Mental Health Law 487/2002) is insufficient, has many gaps and is not uniformly applied. The procedures for non-voluntary confinement or revision of confinement are unclear and do not contain guarantees for the patient seeking release; some of them may amount to arbitrary confinement.

In a press release made public on 31.05.1004 the Ministry of Health recognized the dramatic situation of the mental heath system and started to think about reforming it beginning in 2005. They stated that they would improve the legislation by drafting norms of application, organizing training for psychiatric nurses and reassessing the patients from 6 maximum-security psychiatric hospitals.

There is little information at the central level about the situation of the basic human rights of adults with mental disabilities in institutions. Our contacts with local authorities have revealed that, although it is their responsibility, these authorities are misinformed or unaware of the real situation at the institutions' level and lack data on relevant issues.

In most institutions, patients have not been re-evaluated for years and their rights to rehabilitative and therapeutic activities are denied. When 18, disabled young people are simply transferred to adult institutions. The patients do not have any individualized action plan; a patient's file only indicates the medication administered. There is little action aimed at reinserting patients into the community. People in more need were isolated on the top floor of the main block. Such young people often suffer from mental retardation or other forms of retard and are isolated in their rooms.

The medical units are under funded. As a result, they often lack the necessary medicines or equipment. The staff is insufficient, unqualified, badly paid, often unmotivated, working in tough and disheartening conditions. The buildings are overcrowded, unsuitable for their current destination, most of them in a terrible state. Patients lack suitable food, heating or decent living conditions. As a result, the death rate may be quite high, especially during winter. Some patients may be locked up in barred, bad-lighted 'isolation cells' for years, in terrible conditions, with no re-assessment, nor any indication of the reason for being locked-up on their file. There is evidence of electric shocks therapy still being conducted in some hospitals, despite the prohibitions in the law.

There is almost no communication between the Ministry for Health and the State Authority for Persons with Handicap, which share responsibility for mentally disabled people (at times it may be unclear which is responsible for which institution). There is little communication between state authorities and NGOs.

7. THE ROLE OF THE OMBUDSMAN ON PROTECTING HUMAN RIGHTS

There are changes in the means of action accessible to the Ombudsman (the Advocate of the People), but it is not yet clear whether these will reinvigorate an otherwise weak institution.

The ombudsman has never been a strong institution in Romania. However, its role in protecting citizens' rights has been severely diminished during the last couple of years when it merely played the role of an advisory body to the Constitutional Court. The law on the Advocate of the People was amended accordingly. Recent amendment to the Constitution gave the Ombudsman the possibility to raise unconstitutionality exceptions directly to this Court. Whether or not this would contribute to human rights protection is difficult to say the institution being rather invisible from this point of view. Lack of transparency is a major characteristic of the Ombudsman activity, and results in distancing the institution from those whose constitutional rights it is required to protect.

FINAL REMARKS

A recent press release issued by the President of Romania has revealed that the old mentality of confining criticism on some social and political aspects to the domestic arena is still in place. The President aggressively reacted against a statement made on the independence of the Supreme Council of Magistracy, which mentioned the intention to inform the European Commission on the situation. The Presidential Press release issued on 18 June 2004 considers that: *"…the evidently unsupported and unprofessional allegations of persons … who threaten[s] the Superior Council of Magistrates and the Romanian State with the internationalization of an issue which is of strictly domestic concern, are acts unworthy of true intellectuals, who know how to embrace responsibilities in a democracy".* One could question whether freedom of expression is allowed only when admiring governmental attitudes or also when critiquing it, and marvel when did national borders convert to legitimate limits to the freedom of expression, against all domestic and international human rights legislation.